IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 7TH JULY 2006 / 16TH ASHADHA,1928

CRL.A.No. 140 of 2005(B)

CC.481/2000 of JUDL. MAGISTRATE OF FIRST CLASS-III, TRIVANDRUM

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APPELLANT:

V.THYAGARAJAN, GEETHA BHAVAN,
NEAR MUSLIM HIGH SCHOOL,
KANIYAPURAM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.MADATHIL S.ANIL KUMAR

RESPONDENTS:

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1. SUSEELA, W/O.SASIDHARAN NAIR,
PLAVARAKKA VEEDU, SASTHAVATTOM P.O.,
CHIRAYINKEEZH TALUK, THIRUVANANTHAPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.J. GEORGE

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 07/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

CRL.A. 140/2005

DATED THIS THE 7TH DAY OF JULY, 2006

JUDGMENT

The complainant is the appellant. He challenges the dismissal of his complaint, pending as C.C.No.481/2000, on the file of the Judicial Magistrate of First Class-III, Thiruvananthapuram, preferred under Section 138 of the Negotiable Instruments Act, in short 'the Act', on the ground that he was absent, on the appointed date, after obtaining leave from this Court. Though the service is complete, the first respondent chose not to appear.

2. I heard the learned counsel Mr. Madathil S.Anil Kumar and Ms. Jameela Devi. It is submitted by the counsel that there was representation from the counsel, to the effect that the complainant was laid up. But the counsel clearly concedes that there was no corroboratory documents, filed along with the petition, to condone the absence of the complainant. Obviously

this Court cannot find fault with the learned Magistrate of Thiruvananthapuram, for dismissing such appeal, when the matter was posted for recording the evidence of the complainant. Nevertheless, the omission on the part of the counsel to support the prayer with necessary document, need not be a criterion, in putting the complainant in to difficulty, although the latter is also equally responsible to supply the document showing the reason for his absence. However, for the ends of justice, I set aside the impugned order dated 7.9.2004, and restore C.C.No.481/2000 on the file of the Judicial Magistrate of First Class-III, Thiruvananthapuram.

3. The complainant shall appear before the Court below on 26.7.2006. The learned Magistrate shall dispose of the matter, according to the law, at the earliest.

The appeal is allowed as above.

J.M.JAMES
JUDGE

mrcs